

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MEL and ALICE GREEK, husband and wife

Plaintiff,

v.

PIERCE COUNTY, KARIE HAMILTON,
CHRISTIAN FYNBOE, JOSEPH KOLP, and
NATHALY KOLP, and their respective
marital communities,

and

REAL PROPERTY DESCRIBED AS THAT
PORTION OF CERTAIN "WALK", 10 FEET
IN WIDTH, LYING BETWEEN A PART OF
BLOCK "A" ON THE WEST AND A PART
OF BLOCKS 1 AND 2 ON THE EAST IN
SECOND WILDARE ADDITION, PIERCE
COUNTY, WASHINGTON, AS THE SAME
IS RECORDED ON PAGE 44 OF VOLUME
11 OF PLATS ON FILE IN THE OFFICE OF
THE PIERCE COUNTY AUDITOR, ETC.,

Defendants.

CASE NO. C13-5558 RBL

ORDER GRANTING MOTION
TO DISMISS

(Dkt. #11)

THIS MATTER is before the Court on Defendant Pierce County's Motion to Dismiss
pursuant to Fed. R. Civ. P 12(b)(6). (Dkt. # 11). Plaintiffs Mel and Alice Greek seek to recover

1 damages from the County for violations of the takings clauses of the United States and
2 Washington state Constitutions.

3 At the heart of this case is an argument between the Greeks and the Hamiltons (their
4 neighbors) as to whether a walkway dedicated in 1924 as part of a residential plat was intended
5 to be private or public. The Hamiltons' (distant) predecessors-in-interest apparently believed
6 that the walk was public and asked Pierce County to vacate (i.e., relinquish) its interest in the
7 walk. The County did so by passing a vacation ordinance in 1948. According to the Greeks'
8 Amended Complaint, in 2005, 57 years after the ordinance's passage, the Hamiltons constructed
9 a fence on the walk, thereby obstructing the Greeks' use of a portion of it. The County's passage
10 of the 1948 vacation ordinance is the sole factual basis for the Greeks' federal and state law
11 takings claims against the County.

12 The Greeks allege that the County never owned an easement in the right-of-way because
13 the walk was dedicated to the common ownership of all the private property owners within the
14 plat. Regardless of whether this allegation is correct, the mere fact that, at the request of
15 property owners, the County disclaimed any interest it held in the walk through the passing of
16 the vacation ordinance does not give rise to a takings violation under state or federal law.

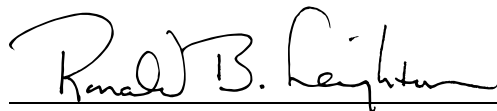
17 To plead a claim under the Fifth Amendment's Takings Clause, the Greeks must allege a
18 government action that, as a matter of law, amounts to a physical occupation or regulation of
19 their property. *See Lingle v. Chevron*, 544 U.S. 528, 538 (2005). The Greeks have done neither.
20 The Greeks have not alleged regulatory action, and they point to nothing in the vacation
21 ordinance that required that they permit physical occupation of the walk by the Hamiltons or any
22 other property owner.

1 Nor have the Greeks pleaded a viable claim under the Washington Constitution's Takings
2 Clause. To plead a state takings claim, the Greeks must allege government action that, as a
3 matter of law, either (1) resulted in the acquisition of an interest in their property, (2) regulated
4 the use of their property, or (3) was a public project which caused damage to their property.
5 *Ftitzpatrick v. Okanogan County*, 143 Wn. App. 288, 302-303, 177 P.3d 716, 723 (2008). The
6 Greeks have not alleged any facts to show that any of these situations exists here. The Greeks do
7 not allege that the County built the fence, or that the County proximately caused its construction.
8 Moreover, the County's vacation ordinance could not have resulted in the acquisition of private
9 property, because a vacation resolution instead *removes* a government-owned easement over
10 private property. In other words, the vacation resolution did not create a government-owned
11 property interest, it *extinguished* one.

12 The Greeks have not alleged a valid claim for a violation of the takings clause under
13 either federal or state law. Therefore, the County's Motion to Dismiss is **GRANTED**.¹

14 IT IS SO ORDERED.

15 Dated this 16th day of September, 2013.

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18 RONALD B. LEIGHTON
19 UNITED STATES DISTRICT JUDGE
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23 ¹ The County's Motion also seeks to dismiss quiet title and ejectment claims brought against it by the
24 Greeks. It is unclear whether the Greeks sought to bring these claims against the County or only the other
Defendants. In any case, these claims do not relate to the County, and to the extent that any such claims were made
against the County, they are also dismissed.